

UNITED STATES DISTRICT COURT

Northern

District of

California

UNITED STATES OF AMERICA

V.

USA PERFORMANCE TECHNOLOGY INC

Date of Original Judgment: 7/21/2014
(or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. § 3742(f)(1) and (2))
 - Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
 - Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))

THE DEFENDANT ORGANIZATION:

- pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) 1-3, and 5-10
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1831(a)(5)	Conspiracy to Commit Economic Espionage	10/1/2011	1
18 U.S.C. § 1831(a)(5)	Conspiracy to Commit Theft of Trade Secrets	10/1/2011	2
18 U.S.C. § 1831(a)(2)	Attempted Economic Espionage	7/19/2011	3

The defendant organization is sentenced as provided in pages 2 through 5 of this judgment.

- The defendant organization has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's
Federal Employer I.D. No.: **26-0451664**

7/10/2014

Defendant Organization's Principal Business Address:

1000 Broadway, Suite 480
Oakland, CA 94607

Date of Imposition of Judgment

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Jeffrey S White
Signature of Judge

Jeffrey S. White

U.S. District Judge

Name of Judge

Title of Judge

Defendant Organization's Mailing Address:

1000 Broadway, Suite 480
Oakland, CA 94607

DEFENDANT ORGANIZATION: USA PERFORMANCE TECHNOLOGY INC
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ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §1832(a)(2)	Attempted Theft of Trade Secrets	7/19/2011	5
18 U.S.C. § 1832(a)(3)	Possession of Trade Secrets	7/19/2011	6, 7 & 9
18 U.S.C. § 1832(a)(2) &	Conveying Trade Secrets; Aiding and Abetting	7/19/2011	8
§2			
18 U.S.C. § 1512(k)	Conspiracy to Tamper with Witnesses and Evidence	5/11/2011	10

DEFENDANT ORGANIZATION: USA PERFORMANCE TECHNOLOGY INC
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PROBATION

The defendant organization is hereby sentenced to probation for a term of:

Five years

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is be a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions below or on the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organization's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer at least ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

DEFENDANT ORGANIZATION: USA PERFORMANCE TECHNOLOGY INC
CASE NUMBER: DCAN411CR00573-04 JSWJudgment — Page 4 of 5**CRIMINAL MONETARY PENALTIES**

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

TOTALS	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
	\$ 3,600.00	\$ 18,900,000.00	\$ 0.00

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:
- the interest requirement is waived for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT ORGANIZATION: USA PERFORMANCE TECHNOLOGY INC
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Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are be due as follows:

A Lump sum payment of \$ 18,903,600.00 due immediately, balance due

not later than _____, or
 in accordance with C or D below; or

B Payment to begin immediately (may be combined with C or D below; orC Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; orD Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

 Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant numbers), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

 The defendant organization shall pay the cost of prosecution. The defendant organization shall pay the following court cost(s): The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

*\$27,829,893.67 in the form of a money judgment to be joint and several with Walter Liew (CR 11-00573-01 JSW). The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the money judgment ordered herein and may order such payment in the future, but such future orders do not affect the defendant's responsibility for the full amount of the money judgement owed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.